

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Kulig	Team: Team # 5	CCRB Case #: 201113726	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/20/2011 5:45 PM	Location of Incident: § 87(2)(b)	Precinct: 70	18 Mo. SOL 4/20/2013	EO SOL 4/20/2013	
Date/Time CV Reported Thu, 10/20/2011 7:09 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 10/20/2011 7:09 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Leonard Clarke	27183	940013	070 PCT
2. SGT Thomas Kennedy	02016	891686	070 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Ana Montoya	10116	944822	070 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Thomas Kennedy	Abuse: Sgt. Thomas Kennedy supervised the search of § 87(2)(b) in Brooklyn.	
B.POM Leonard Clarke	Abuse: PO Leonard Clarke searched § 87(2)(b) in Brooklyn.	
C.POM Leonard Clarke	Abuse: PO Leonard Clarke threatened to arrest § 87(2)(b) and § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Case Summary

§ 87(2)(b) filed the following complaint with the CCRB on October 20, 2011 via the call processing system.

At approximately 5:45 p.m. on October 10, 2011, Sgt. Thomas Kennedy and PO Leonard Clarke entered § 87(2)(b) in Brooklyn. The following allegations resulted:

- **Allegation A – Abuse of Authority: Sgt. Thomas Kennedy supervised the search of** § 87(2)(b) **in Brooklyn.** § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation B – Abuse of Authority: PO Leonard Clark searched** § 87(2)(b) **in Brooklyn.** § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- **Allegation C – Abuse of Authority: PO Leonard Clarke threatened to arrest** § 87(2)(b) **and** § 87(2)(b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
- § 87(4-b) § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

This case was originally assigned to Inv. Jihan Varisco. It was sent to mediation on February 22, 2012 and returned on August 15, 2012. It was reassigned to Inv. Jessica Kulig on August 27, 2012.

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

Testimony

§ 87(2)(b) provided a telephone statement when he filed this complaint with the CCRB on October 20, 2011 (encl. 4A-4B).

§ 87(2)(b) reported that at approximately 5:45 p.m. on October 20, 2011, four officers in plainclothes from the 70th Precinct, including officers identified by the investigation as PO Leonard Clarke and Sgt. Thomas Kennedy, approached him in front of his building, at § 87(2)(b) in Brooklyn, and accused him of having been involved in a fight. The officers then entered and searched his apartment, threatening his family members with arrest.

Victim: § 87(2)(b)

- § 87(2)(b) *a 5'0" tall, 120 lb. Hispanic woman with auburn hair and brown eyes,*

was § 87(2)(b) old at the time of the incident. § 87(2)(b)
§ 87(2)(b) is the mother of § 87(2)(b)

Testimony

§ 87(2)(b) provided statements pertaining to the incident over the telephone on November 15, 2011 (encl. 5A) and in person at the CCRB on December 15, 2011 (encl. 5B-5F).

§ 87(2)(g)

At approximately 5:45 p.m. on October 20, 2011, § 87(2)(b) and her son, § 87(2)(b) arrived at § 87(2)(b)'s apartment, located at § 87(2)(b) in Brooklyn. § 87(2)(b) had just gotten two teeth removed at the dentist, and he had gauze in his mouth as a result. On their way back to the apartment from Newkirk Plaza, § 87(2)(b) and § 87(2)(b) witnessed a commotion. § 87(2)(b) ran ahead to see what was happening, and when § 87(2)(b) arrived, she observed two kids who had presumably been fighting.

Once they were back inside the apartment, § 87(2)(b) informed § 87(2)(b) that there were police officers at the building and that he was going downstairs to smoke a cigarette. A few minutes later, § 87(2)(b) came back upstairs with four police officers; two 5'7" tall, uniformed white males, who remain unidentified; a 5'9" tall, 45-46 year old, black male with green eyes and a muscular build, identified by the investigation as PO Leonard Clarke; and a 5'9"-6'0" tall, 49 year old, white male with a medium build and a bald head, identified by the investigation as Sgt. Thomas Kennedy. The officers asked § 87(2)(b) if § 87(2)(b) lived with her, and she told them that he was her son.

§ 87(2)(b) was asked to close the door to her apartment while the officers questioned § 87(2)(b). § 87(2)(b) stated that she kept the door slightly open to see what was happening. She heard the officers ask § 87(2)(b) what he had done that day.

PO Clarke and Sgt. Kennedy then knocked on the door again, and § 87(2)(b) allowed them to enter the apartment. While § 87(2)(b) showed Sgt. Kennedy her bedroom, PO Clarke entered and began searching her son's room. § 87(2)(b)'s daughter, § 87(2)(b) who was also in the apartment at the time, informed § 87(2)(b) that PO Clarke had opened several drawers. § 87(2)(b) also observed PO Clarke holding her son's mattress, presumably after having just lifted it. She saw several drawers slightly open.

§ 87(2)(b) asked PO Clarke why he was searching her apartment without a warrant. PO Clarke responded, "I do whatever I want." He then stated, "If I find out you were involved in something, I'm gonna come back and arrest all of you." PO Clarke and Sgt. Kennedy then left.

Victim: § 87(2)(b)

- § 87(2)(b) a 5'2" tall, 102 lb. Hispanic female with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident. § 87(2)(b)
§ 87(2)(b) is the daughter of § 87(2)(b)

Testimony

§ 87(2)(b) was interviewed at the CCRB on December 15, 2011 (encl. 6A-6D).

At approximately 5:45 p.m. on October 2, 2011, § 87(2)(b) was inside her apartment, located at § 87(2)(b) in Brooklyn, with her mother, § 87(2)(b) who had just come back from the dentist with her brother, § 87(2)(b).

Two police officers, identified by the investigation as PO Leonard Clark and Sgt. Thomas Kennedy, came to the door of the apartment. The officers spoke to § 87(2)(b) who gave them permission to enter. While § 87(2)(b) and Sgt. Kennedy spoke in the living room, PO

Clarke entered the bedroom of § 87(2)(b)'s brother and closed the door. § 87(2)(b) heard PO Clarke opening plastic bins in the bedroom and informed § 87(2)(b) of this. § 87(2)(b) opened the door to the bedroom, and § 87(2)(b) observed PO Clarke kneeling next to the bed with the sheet off. When § 87(2)(b) protested PO Clarke's actions, he told her, "I can do whatever the fuck I want to do." PO Clarke then informed § 87(2)(b) in the presence of § 87(2)(b) that he would return and arrest them all if she was lying. § 87(2)(b) entered the apartment, and PO Clarke spoke with him for approximately five minutes. PO Clarke obtained § 87(2)(b)'s name. The officers then left.

Attempts to Contact Civilians

Prior to this case being forwarded to the mediation unit, § 87(2)(b) was contacted four times over the telephone between October 28, 2011 and January 9, 2012. Voicemails were left on the first two occasions, and § 87(2)(b) was scheduled for an interview at the CCRB through his mother, § 87(2)(b) on the third occasion. § 87(2)(b) did not appear for his scheduled appointment. During the fourth call placed to § 87(2)(b) mediation was offered and accepted. A first please call letter was sent to him on October 21, 2011. After the case was sent back from the mediation unit, § 87(2)(b) was called twice. Voicemails were left each time. A reassignment letter was also sent to § 87(2)(b) on August 27, 2012. A Department of Corrections search for § 87(2)(b) yielded multiple results, but none could be confirmed as the complainant in this case.

NYPD Statement(s):

Subject Officer: PO LEONARD CLARKE

- *PO Clarke, a 5'11" tall, 300 lb. black male with brown eyes and black hair, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, PO Clarke was assigned to anti-crime with Sgt. Thomas Kennedy. He was dressed in plainclothes and was assigned to an unmarked Chevy Impala. He worked between 9:30 a.m. and 6:05 p.m.*

Memo Book (encl. 7A-7C)

At 3:00 p.m., PO Clarke responded to a possible crime with a firearm at Newkirk Avenue and Rugby Road. One male was stopped inside of § 87(2)(b) and an "Other" report was prepared.

Testimony

PO Clarke was interviewed at the CCRB on September 18, 2012 (encl. 7D-7F).

At approximately 5:45 p.m. on October 20, 2011, PO Clarke and his partner, identified by the investigation as Sgt. Thomas Kennedy, got a call about a dispute with a firearm at Newkirk Avenue and Rugby Road in Brooklyn. When PO Clarke arrived on scene, several unidentified witnesses stated that a Hispanic male who had been involved in the dispute had entered § 87(2)(b) § 87(2)(b).

PO Clarke and Sgt. Kennedy entered the building and stopped a Hispanic male, identified by the investigation as § 87(2)(b) on the second floor, who PO Clarke stated fit the description that had been given over the radio. PO Clarke recalled that he had received a description for a Hispanic male with a black hat.

PO Clarke and Sgt. Kennedy asked § 87(2)(b) if he lived in the building. § 87(2)(b) § 87(2)(b) stated that his mother lived in the building and that he had come from her apartment. When he could not produce identification, PO Clarke suspected him of trespassing. § 87(2)(b)

§ 87(2)(b) told the officers that he would show them his mother's apartment. At some point, PO Clarke frisked § 87(2)(b). He could not recall specifically where on his body he patted § 87(2)(b) but he stated that he did not go into his pockets.

§ 87(2)(b) knocked on the door of an apartment. A Hispanic female, identified by the investigation as § 87(2)(b) opened the door and asked what was going on. § 87(2)(b) began screaming, "What are y'all doing to my son? Leave my son alone," in what PO Clarke described as a hostile manner. PO Clarke told § 87(2)(b) that he needed to verify that § 87(2)(b) lived there.

§ 87(2)(b) gave PO Clarke and Sgt. Kennedy permission to enter the apartment, so they went inside. PO Clarke recalled that several officers went to the apartment with him and his partner, but he did not recall who else entered. PO Clarke looked around the front hallway for his safety. § 87(2)(b) continued to ask why the officers were there, and she told PO Clarke to "get the fuck out" of her apartment. PO Clarke told § 87(2)(b) to calm down and asked if she knew § 87(2)(b). § 87(2)(b) confirmed that § 87(2)(b) was her son. PO Clarke and Sgt. Kennedy left.

PO Clarke denied searching the apartment or ever leaving the hallway at the entrance to the apartment. He denied saying, "I can do whatever the fuck I want" or threatening to arrest any of the occupants of the apartment. He did not recall interacting with § 87(2)(b)'s daughter, § 87(2)(b).

Subject Officer: SGT. THOMAS KENNEDY

- *Sgt. Kennedy, a 5'9" tall, 200 lb. white male with a bald head and blue/green eyes, was § 87(2)(b) years old at the time of the incident.*
- *On the day of the incident, Sgt. Kennedy was the anti-crime supervisor. He was assigned to unmarked vehicle # 474, a black Chevrolet of an unknown model, with PO Leonard Clarke. He was dressed in plainclothes and worked from 9:26 a.m. to 6:10 p.m.*

Memo Book (encl. 8A-8B)

Sgt. Kennedy did not have any entries in his memo book pertaining to the incident.

Testimony

Sgt. Kennedy was interviewed at the CCRB on January 30, 2013 (encl. 8C-8D).

Sgt. Kennedy did not recall the incident. He did not recognize § 87(2)(b) or § 87(2)(b) from the photographs taken of them at the CCRB. Sgt. Kennedy was familiar with the area but did not recall ever going to § 87(2)(b).

Witness Officer: PO ANA MONTOYA

- *PO Ana Montoya, a 5'4" tall, 225 lb. Hispanic female with brown hair and brown eyes, was § 87(2)(b) old at the time of the incident.*
- *On the day of the incident, PO Montoya was assigned to Patrol Sectors CEF with PO Thomas Yang. She was assigned to marked RMP # 3250. She was dressed in uniform and worked from 3:40 p.m. to 11:35 p.m.*

Memo Book (encl. 9A-9C)

At 5:30 p.m., PO Montoya received a gun run at Newkirk Avenue and East 16th Street. At 5:35 p.m., PO Montoya arrived at § 87(2)(b) and conducted a vertical. At 5:42 p.m., PO Montoya marked the vertical "non-crime corrected." There was also an alarm at § 87(2)(b) at

this time. At 5:50 p.m., there was another priority crime at East 14th Street and Avenue J. PO Montoya marked it as “non-crime corrected” at 5:58 p.m.

Testimony

PO Montoya was interviewed at the CCRB on January 30, 2013 (encl. 9D-9E)

PO Montoya did not recall the incident. She had memo book entries placing her at § 87(2)(b) in Brooklyn at the time (a location determined by the investigation to be adjacent to § 87(2)(b) in Brooklyn).

Officers Not Interviewed

The two unidentified officers could not be identified due to generic descriptions. Their statements would not have affected the recommended disposition.

NYPD Documents

SPRINT # § 87(2)(b) (encl. 11A)

At 5:28 p.m. on October 20, 2011, an anonymous female caller reported a possible crime with a firearm in the vicinity of Newkirk Avenue and East 16th Street in Brooklyn. She provided a description of a white male with black hair, a white tee shirt, a black jacket, and a black firearm in hand. She stated that she was driving by when the unknown individual pointed a gun at someone. She reported a large group at the location. When officers from and unidentified unit arrived at 5:32 p.m., witnesses stated that a group of people entered § 87(2)(b). At 5:33 p.m., officers in RMP # 3171 did a vertical of the building. At 5:40 p.m., the anonymous caller left the location.

SPRINT # § 87(2)(b) (encl. 11B)

A duplicate job was reported at § 87(2)(b) in Brooklyn, adjacent to § 87(2)(b). Officers from Patrol Sector C arrived on scene at 5:34 p.m. and reported it as non-crime corrected at 5:42 p.m.

Tour 2 Roll Call (encl. 11D-11Q)

PO Leonard Clarke was assigned to anti-crime on the October 20, 2011 Tour 2 Roll Call. Sgt. Thomas Kennedy is listed as the anti-crime sergeant, and Sgt. Danielle Goldberg is the anti-crime supervisor. There are no other officers assigned to anti-crime for this tour.

Tour 3 Roll Call (encl. 11R-11BB)

PO Ana Montoya was assigned to Patrol Sectors CEF with PO Thomas Yang. According to the Roll Call, they were assigned to RMP # 3171.

Daily Vehicle Assignment Sheet (encl. 11CC)

Vehicle # 325010 was assigned to Patrol Sectors CEF for Tour 2 and Tour 3. Vehicle # 317110 was assigned to the stationhouse for Tour 2 and was assigned to the Impact Sergeant for Tour 3. Vehicle # U474, an anti-crime vehicle, was out of service for Tour 2 and Tour 3.

Status of Civil Proceedings

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of February 13, 2012, almost a month after the 90-day filing deadline, with regard to the incident (encl. 12A).

Civilians Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Civilians CCRB History

- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 3A).
- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 3B).
- This is the first CCRB complaint filed by [§ 87(2)(b)] (encl. 3C).

Subject Officer(s) CCRB History

- Sgt. Thomas Kennedy has been a member of the service for 26 years and there are four substantiated CCRB allegations against him. (encl. 2A-2B).
 - A discourtesy allegation was substantiated against Sgt. Kennedy in CCRB # 8901608. There is no NYPD disposition available.
 - A force allegation and a discourtesy allegation were substantiated against Sgt. Kennedy in CCRB # 8903739. There is no NYPD disposition available.
 - A seizure of property allegation was substantiated against Sgt. Kennedy in CCRB # 200614150. The CCRB recommended instructions for Sgt. Kennedy. Sgt. Kennedy was given instructions by NYPD.
- PO Leonard Clarke has been a member of the service for seven years and there are four substantiated CCRB allegations against him. (encl. 2C-2D).
 - A force allegation, a vehicle stop allegation, and a vehicle search allegation were substantiated against PO Clarke in CCRB # 200717264. The CCRB recommended charges for PO Clarke. Command discipline was taken against PO Clarke for the force allegation. No disciplinary action was taken against PO Clarke for the vehicle stop and vehicle search allegations.
 - A vehicle stop allegation was substantiated against PO Clarke in CCRB # 200808476. The CCRB recommended charges. No disciplinary action was taken due to the statute of limitation.

Conclusion

Identification of Subject Officers

- [§ 87(2)(b)] identified PO Clarke by name during his initial CCRB complaint. [§ 87(2)(b)] [REDACTED] stated that she obtained his name from the 70th Precinct stationhouse by providing a description of the officer. PO Clarke confirmed his involvement and had memo book entries pertaining to the incident. [§ 87(2)(g)] [REDACTED]
- PO Clarke did not record his partner for October 20, 2011. Sgt. Kennedy was the only other male officer assigned to anti-crime. Although Sgt. Kennedy did not recall the incident, he confirmed that he was partnered with PO Clarke on this day. Sgt. Kennedy matched the physical description provided by [§ 87(2)(b)] [§ 87(2)(g)] [REDACTED]

Allegation Not Pleaded

- § 87(2)(g) [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: Sgt. Thomas Kennedy supervised the search of § 87(2)(b) in Brooklyn.

Allegation B – Abuse of Authority: PO Leonard Clarke searched § 87(2)(b) in Brooklyn.

§ 87(2)(b) alleged that, upon letting PO Clarke and Sgt. Kennedy inside her apartment, PO Clarke entered her son's bedroom and began searching. When § 87(2)(b) informed her mother of this, § 87(2)(b) looked inside and observed PO Clarke holding up the mattress on her son's bed. She also observed that several drawers were slightly open. § 87(2)(b) stated that she heard PO Clarke opening several plastic bins inside the room and that she saw PO Clarke kneeling next to the bed with the sheet off.

PO Clarke stated that after he and Sgt. Kennedy entered the apartment, they asked § 87(2)(b) a few questions to confirm that her son was § 87(2)(b). The officers left without searching or leaving the front hallway of the apartment. Sgt. Kennedy had no recollection of the incident.

§ 87(2)(g) [REDACTED]
[REDACTED]

Allegation C – Abuse of Authority: PO Leonard Clarke threatened to arrest § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that, as PO Clarke was leaving, he stated, "If I find out you were involved in something, I'm gonna come back and arrest all of you." § 87(2)(b) corroborated her statement.

PO Clarke denied ever threatening to arrest § 87(2)(b) or § 87(2)(b). Sgt. Kennedy did not recall the incident.

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(4-b) § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date